ST 00-10
Tax Type: Sales Tax
Issue: Disallowed Exemption Certificates
Sales v. Resale Issues
Bearing the Burden for Payment of Tax (Claim Issues)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE	)	Docket No. 98-ST-0000
OF THE STATE OF ILLINOIS	)	IBT No. 0000-0000
	)	NTL No. SF-9800000000000
v.	)	SF-9800000000001
"ARLISS BOOK CARNIVALS"	)	John E. White,
Taxpayer.	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Brian Wolfberg & Jerome Wiener, Schain, Burney, Ross & Citron, Ltd., for taxpayer; John Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

Following audit, the Illinois Department of Revenue ("Department") issued two Notices of Tax Liability ("NTLs") to "Arliss Book Carnivals" ("Arliss" or "taxpayer"), which assessed retailers' occupation tax ("ROT") measured by the gross receipts "Arliss" realized from transactions with Illinois schools. "Arliss" protested those NTLs and requested a hearing.

Pursuant to a pre-hearing order, the parties agreed that the issue to be resolved was whether certain transactions were exempt from Illinois ROT. I have considered the evidence and stipulations offered at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend the issue be resolved in favor of taxpayer, and that the tax assessed be cancelled.

Findings of Fact:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission of the NTLs, under the certificate of the Director, showing a total liability due and owing in the amount of $478,762. Department Ex. 1.

2. "Arliss" business included selling books to others for resale or for use. Taxpayer Ex. 1; Department Ex. 3; Hearing Transcript ("Tr.") pp. 41-42 (testimony of "John Doe" ("Doe"), who served as chairman of the board for "Arliss" during the audit period), 63-64 (testimony of "Dr. Jane Plain" ("Plain"), the librarian at "#1" elementary school in Chicago).

3. During the period at issue, July 1993 through and including the month of December 1996, "Arliss" was a retailer maintaining a place of business in Illinois, since it employed an Illinois agent/contractor to warehouse and distribute the books it sold to persons for use or consumption in Illinois. *See* Department Ex. 1; 35 **ILCS** 105/1; Tr. pp. 82-83 (testimony of "Carl Becker" ("Becker"), Illinois distributor for "Arliss" during the audit period).

4. Following audit, the Department determined that certain gross receipts "Arliss" realized during the audit period were subject to ROT. *See* Department Ex. 1. Those receipts were derived from transactions in which "Arliss" delivered physical possession of books to Illinois schools for resale at school-run social events called "book carnivals," following which the school tendered payment for any books the school decided not to return to "Arliss". Taxpayer Ex. 1; Department Ex. 3; Tr. pp. 37 ("Doe"), 62-65, 72-75 ("Plain", who, on behalf of

the "#1" elementary school, purchased books from "Arliss" during the audit period).

5. "Arliss" used telemarketers to solicit Illinois schools that had previously purchased books from "Arliss", but had not done so recently. Tr. p. 12 ("Doe").

6. "Arliss" gave each school a period of time after the date the school's book fair was held to decide whether they wanted to return any books not sold. Tr. pp. 36 ("Doe"), 76 ("Plain"); *see also*, 810 **ILCS** 5/2-326.

7. The schools decided, or had control over:

- what books "Arliss" would deliver for resale or use. *See* Tr. pp. 40-42, 49 ("Doe"), 64-65 ("Plain").
- when a book fair would be held. Tr. p. 49 ("Doe"), 65 ("Plain").
- how books would be displayed at book fairs. Tr. p. 66 ("Plain").
- how book fairs would be announced or advertised to the persons who would attend them. Tr. pp. 46-47, 50 ("Doe"), 67-68 ("Plain").
- the prices charged for books at book fairs. Tr. pp. 48-49 ("Doe"), 70-71 ("Plain").
- what books would be kept, and what books would be returned to "Arliss". Tr. pp. 44-45, 49 ("Doe"), 72-73 ("Plain").

8. Approximately two to three weeks before a school was scheduled to hold a book fair, "Arliss" would send it a package of materials (hereinafter referred to as the "pre-delivery package ") relating to the books to be delivered. Tr. pp. 16, 44-45 ("Doe").

9. Some of the materials included in the pre-delivery package were a list of number and titles of the books to be delivered, various business forms, and promotional materials. Tr. pp. 16-17, 20, 41-42 ("Doe"), 102 (testimony of "Alan Greenspan" ("Greenspan"), vice-president of finance and administration for "Arliss" during the audit period); *see also*, Department Exs. 2-3; Taxpayer Ex. 1 (some of the documents included in "Arliss" pre-delivery package).

10. Some of the promotional materials given to schools included banners or posters announcing or advertising the book carnival. Tr. pp. 16-17 (“Doe”). Those posters and banners may or may not have had the name “Arliss” printed on them. *Id*. The schools would decide whether and how to use such materials. Tr. pp. 46-47, 50 (“Doe”), 67-68 (“Plain”).

11. “Arliss” would also include within the pre-delivery package brochures displaying the various titles that could be obtained from “Arliss”. Department Ex. 2 (Department Exhibit 2 is a 11" x 14" color brochure featuring pictures, descriptions and prices of book titles available from “Arliss”, which are generally categorized by reading level or other subject headings); Tr. pp. 17-18 (“Doe”), 67-68 (“Plain”).

12. “Arliss” did not tender to each school, as part of its pre-delivery package, a bill that detailed what the school’s purchase price was for each of the books delivered. Tr. pp. 20 (“Doe”), 79-80 (“Plain”); Department Ex. 3.

13. Instead, one of the documents “Arliss” issued with those materials included a worksheet to be completed by each school following the book fair. Department Ex. 3. That worksheet allowed each school to calculate what it owed for the books delivered by, and not returned to, “Arliss”. Department Ex. 3. The amount a school would owe would generally be calculated as a percentage of the retail value of the books not returned to “Arliss”. *See id.*; Tr. pp. 22-23, 35-36 (“Doe”), 78 (“Plain”), 99-101 (“Greenspan”).

14. The worksheet begins by having the school identify the amount of money it received from the fundraising book fair. Department Ex. 3, line 1. The school’s

purchase price for whatever books it would not return to "Arliss" is then determined as a percentage of that gross sales amount. *Id*., lines 3-4. The greater a school's sales, the lower the percentage the school owed "Arliss" for the books not returned. *Id*.; Tr. pp. 100 ("Greenspan").

15. The worksheet also provided slightly different percentage rates to determine a school's purchase price if the school decided to keep some of the books delivered for its own use. Department Ex. 3; Tr. pp. 99-100 ("Greenspan").

16. When persons attending school-run book carnivals purchased books, they paid cash or wrote checks payable to the individual school. *See* Tr. p. 74 ("Plain").

17. If a book was damaged, destroyed or stolen while in a school's custody, following delivery by "Arliss", the school was obliged to pay for that book. *See* Tr. pp. 47 ("Doe"), 71-72 ("Plain"); 810 **ILCS** 5/2-401(2).

18. Within two days following the day of the book fair, a school was required to notify "Arliss" whether it would be keeping any books not sold, and to pay for such books as well as for the books sold at the book fair. Department Ex. 3. The schools paid "Arliss" using their own checks. Tr. pp. 74 ("Plain"), 101-02 ("Greenspan").

19. One of the forms "Arliss" included in its pre-delivery package was a blank exemption certificate, and, once completed and signed by a school and returned to "Arliss", it retained such documents for inspection or audit by taxing authorities. Taxpayer Ex. 1; Tr. pp. 102-04 ("Greenspan"); *see also*, Stipulation of Facts ("Stip.") ¶ 1.

20. For each transaction during the period at issue, "Arliss" obtained such an exemption certificate from each Illinois school to which it made deliveries, and it retained such documents for inspection or audit by the Department. Stip., ¶ 1; Taxpayer Ex. 1.

21. The exemption certificate each Illinois school completed, signed and returned to "Arliss" included:

- "Arliss"' name and address adjacent to the word "Seller";
- a section for the name and address of the "purchaser";
- a section for the purchaser's "State Registration or ID No."
- a section for an individual's "Authorized Signature", the individual's "Title" and the date on which the individual signed the certificate;
- the purchaser's certification that:
  - the "products to be purchased from the seller [are] Books & Related Materials";
  - it is purchasing such property "for School Fund-Raising";
  - it is "… registered with the above listed state … within which "Arliss" Book Carnivals would deliver product to us and that any such product is for wholesale or resale";
  - "if any such property so purchased tax free is used or consumed by the school as to make it subject to a Sales or Use Tax, we [i.e., the purchaser] will pay the tax due directly to the proper taxing authority …."

Taxpayer Ex. 1; Tr. pp. 102-04 ("Greenspan").

Conclusions of Law:

The Parties' Characterizations of the Issue

The issue in this matter involves the proper characterization of transactions between "Arliss" and the schools to whom it transferred tangible personal property[1] during the audit period. "Arliss" asserts that the transactions at issue were its sales of books to Illinois schools, who purchased them either for resale at school-run "book

[1] I will use the terms "tangible personal property" and "goods" interchangeably in this recommendation.

carnivals" or for their own use. Specifically, "Arliss" contends that its agreements with Illinois schools were agreements for "sales or returns of goods" as defined in § 2-326 of the Illinois Commercial Code. Tr. pp. 7-8 (opening statement); Taxpayer's Post-Hearing Brief ("Taxpayer's Brief"), pp. 7, 9-10. "Arliss" contends that the evidence shows that its transactions with schools were sales to exempt purchasers (Taxpayer's Brief, p. 7), and that the gross receipts it earned from those transactions were not subject to tax because there is no dispute that it obtained from each purchaser during the period at issue a facially valid exemption certificate. *Id*., pp. 7-8.

At hearing, the Department asserted that it does not recognize "Arliss"' transfers of books to schools as sales. *See* Tr. pp. 4-5 (opening statement), 60 (argument during oral motion to exclude Dr. "Plain" as a witness). Instead, it argued that the only sales that took place were the sales that were made at school book carnivals held in Illinois. Tr. p. 60. The Department further contends that when the schools sold books at those book carnivals, they were acting as agents for "Arliss" and that "Arliss" was a disclosed principal. Tr. pp. 4-5. To complete that argument, the Department cites to ROT regulation § 130.1915, which provides that where an agent sells tangible personal property for a disclosed principal, the sales are taxable to the principle if the principal is engaged in selling such tangible personal property at retail. *See* Tr. p. 59.

In its brief, the Department revised its phrasing of the issue, so that:

> … reduced to its most basic terms, the issue is whether there were sales of books by "Arliss" to its sponsoring organizations which were exempt from the application of sales tax as being for resale. More precisely, the issue is whether "Arliss" transferred title to and ownership in the tangible personal property to its sponsoring organizations such that, but for the resale certificates, the sales would have been subject to the application of tax.

Department's Reply Brief ("Department's Brief"), p. 3. After discussing the Department's prima facie case and the effect of the parties' stipulation, I will address both of the Department's characterizations of the issue.

The Department's Prima Facie Case

The Department introduced copies of the two NTLs it issued to "Arliss" into evidence under the certificate of the Director. Department Ex. 1. A reproduced copy of the Department's notice of tax liability constitutes prima facie proof of the correctness of the amount of tax due as shown on such notice. 35 **ILCS** 120/4. The Department's prima facie case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276, 279, 48 N.E.2d 926, 927 (1943). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment. Filichio v. Department of Revenue. 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, the "prima facie case is overcome, and the burden shifts to the Department to prove its case, when the taxpayer presents his books and testimony which is not so inconsistent or improbable itself as to be unworthy of belief." Sprague v. Johnson, 195 Ill. App. 3d 798, 803, 552 N.E.2d 436, 439 (4th Dist. 1990) (internal quotation marks omitted).

Section 7 of the Retailers' Occupation Tax Act ("ROTA") includes a statutory presumption that all gross receipts a retailer receives from selling tangible personal property are taxable. 35 **ILCS** 120/7. The same section imposes upon a retailer the duty to retain and produce for inspection or audit documentation that is sufficient to show the

nontaxable nature of the gross receipts from sales claimed to be exempt. *Id*. Thus, while the Illinois General Assembly granted exemptions from tax for the gross receipts a retailer receives from selling goods to exempt purchasers (35 **ILCS** 120/2-5(11)), or from selling goods to purchasers who will use them for exempt purposes (*see*, *e.g.*, 35 **ILCS** 120/2c, 2-5), it also imposed upon the retailer the duty to keep books and records sufficient to distinguish between its taxable and nontaxable gross receipts. 35 **ILCS** 120/7.

Some of the different documents that have been recognized as sufficient to support a retailer's claim that certain gross receipts are not taxable are commonly referred to as "exemption certificates." *See* Hess, Inc. v. Department of Revenue, 278 Ill. App. 3d 483, 484-87, 663 N.E.2d 123, 125-26 (5th Dist. 1996). The contents of an exemption certificate that a retailer must obtain and keep to support its deductions for sales claimed to be exempt are generally described in §§ 1, 2c, 2-5 and 7 of the ROTA (35 **ILCS** 120/1, 2c, 2-5, 7), and more specifically described within regulations promulgated by the Department. *E.g.*, 86 Ill. Admin. Code §§ 130.305(m) (exemption certificates for sales of farm machinery and equipment), 130.325(e) (exemption certificates for sales of graphic arts production machinery and equipment), 130.1405(b) (exemption certificates for sales for resale), 130.2005(r) (records required to document sales to a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes). Generally, an exemption certificate is a writing which contains on its face: (1) the identity of the seller and the purchaser; (2) the signature of the purchaser; (3) a description of the goods being purchased; (4) the exemption identification number or resellers number issued to the purchaser by the Department; and

(5) the purchaser's certification that the tangible personal property being purchased is being purchased for use by an exempt purchaser, is being purchased for an exempt use, or for resale. *See* 35 **ILCS** 120/2-5, 2c, 7; 86 Ill. Admin. Code §§ 130.305(m), 130.325(e), 130.1405(b), 130.2005(r).

The Department does not have to recognize or accept an exemption certificate that does not include, on its face, the information necessary to support a particular claim of deduction. So, for example, if the exemption number written on an exemption certificate is not one that is assigned to the named purchaser, or if the exemption number was not in effect at the time the retailer made the sales, Illinois courts have uniformly agreed that the retailer has not satisfied its burden to show that the gross receipts from such sales are exempt from tax. American Welding Supply Co. v. Department of Revenue, 106 Ill. App. 3d 93, 102, 435 N.E.2d 761, 768 (5th Dist. 1982); Rock Island Tobacco v. Department of Revenue, 87 Ill. App. 3d 476, 478, 409 N.E.2d 136, 138 (3d Dist. 1980). Exemption certificates that are valid on their face, however, are to be accepted by the Department as prima facie evidence that the proceeds from the transactions identified on those certificates are not taxable. American Welding Supply Co., 106 Ill. App. 3d at 101-02, 435 N.E.2d at 768; Rock Island Tobacco, 87 Ill. App. 3d at 479, 409 N.E.2d at 139; 86 Ill. Admin Code § 130.1405(b) ("... the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale.").

A retailer, moreover, is not the insurer of the truthfulness of the facts otherwise included on the exemption certificates signed by its purchasers. Hess, Inc., 278 Ill. App. 3d at 487, 663 N.E.2d at 125-26; American Welding Supply Co., 106 Ill. App. 3d at 101, 103-04, 435 N.E.2d at 767-69. Put another way, if a retailer accepts a facially valid

exemption certificate from a purchaser and presents it for inspection or audit by the Department, the Department cannot require the retailer to jump through the additional hoop of proving that the goods sold were, in fact, used by an exempt purchaser, or were used by the purchaser in an exempt manner. American Welding Supply Co., 106 Ill. App. 3d at 101, 435 N.E.2d at 768 ("We do not agree that the taxpayer, after obtaining certificates of resale from its purchasers, had the additional burden of proving that these sales were indeed for resale."); *see also*, Hess, Inc., 278 Ill. App. 3d at 486-87, 663 N.E.2d at 125-26 ("The purpose of … exemption certificates should remain constant. … The overall regulatory scheme with respect to exemption certificates necessitates a finding that the underlying purchaser is more capable of bearing the burden of knowledge of use of the materials purchased pursuant to an exemption certificate.").

Thus, once the retailer complies with its statutory obligation to support its reported deductions with documents conforming to the particular statute or Department regulation, the retailer has done all it is required to do to support its claim that tax is not due on the gross receipts received from those transactions. American Welding Supply Co., 106 Ill. App. 3d at 101, 103-04, 435 N.E.2d at 769. I do not mean to suggest, however, that a retailer's production of facially valid exemption certificates at hearing creates an irrebuttable presumption. Rather, it only has the effect of rebutting the Department's prima facie case. *Id*. at 102, 453 N.E.2d at 768. Once that occurs, the Department may still establish that the retailer is liable for tax, it just has to do so using a preponderance of competent evidence. *See, e.g.*, Goldfarb v. Department of Revenue, 411 Ill. 573, 580, 104 N.E.2d 606, 609 (1952). What is critical for a retailer, therefore, is to make sure that any exemption certificate it accepts from a purchaser contain — on the

face of the document itself — whatever information is required by the particular statute to establish the exemption. Rock Island Tobacco, 87 Ill. App. 3d at 478-79, 409 N.E.2d at 138.

The Effect of the Department's Stipulation

Here, the Department stipulates that "[t]he assessments at issue represent transactions where schools supplied an [e]xemption [c]ertificate with their Illinois [i]dentification [n]umber to "Arliss" …." Stip. ¶ 1. The Department, moreover, never argues that the certificates "Arliss" obtained from the schools and produced for audit fail to identify, on their face, either the basis for the claimed deduction from taxable gross receipts, or whatever other information is necessary to document the claimed deductibility of those proceeds. Nor does it claim that the certificates fail to describe the transactions (and thereby, the gross receipts) at issue. Whether "Arliss" maintained facially valid exemption certificates regarding the transactions at issue was a fact to which the Department was peculiarly able to stipulate, since it conducted the audit of books and records of "Arliss" for the periods at issue. *See* Department Ex. 1.

When "Arliss" offered the parties' stipulation into evidence (Tr. pp. 3-4), it was relieved of the obligation to introduce into evidence the exemption certificates it obtained and kept as part of its books and records. McGrew Paint & Ashphalt Co. v. Murphy, 387 Ill. 241, 248-49, 56 N.E.2d 416, 419 (1944) (a party's stipulation of a particular fact precludes necessity of proof of that fact). Thus, the parties' stipulation, standing alone, constituted "prima facie proof" that the gross receipts "Arliss" received from the transactions with Illinois schools were not subject to ROT. Rock Island Tobacco, 87 Ill. App. 3d at 479, 409 N.E.2d at 139; 86 Ill. Admin. Code § 130.1405(b); *see also*, 86 Ill.

Admin. Code § 130.2005(*l*)(1) ("Receipts received from retail sales to corporations, societies, associations, foundations and institutions that are organized and operated exclusively for educational purposes are not taxable."). Moreover, since "[t]he effect of producing … [exemption] certificates at … hearing [i]s to shift the burden of proof from the taxpayer to the Department", that stipulation — again, standing alone — acted to rebut the Department's determination that the gross receipts "Arliss" received from such transactions were subject to tax. American Welding Supply Co., 106 Ill. App. 3d at 102, 453 N.E.2d at 768.

Where a taxpayer rebuts the Department's prima facie case, the burden shifts to the Department to prove its case by a preponderance of the evidence. Goldfarb, 411 Ill. at 580, 104 N.E.2d at 609. Here, the Department offered no evidence after taxpayer rested. *See* Tr. p. 118. The evidence offered during its case-in-chief and during the case-in-chief of "Arliss", moreover, does not support either of the Department's theories. Specifically, the evidence does not support the Department's argument that "Arliss"' transfers of books to schools were not sales at retail. Nor does the evidence support the Department's contention that "Arliss" is liable for ROT because the schools disclosed to persons who attended school-run book carnivals that they (the schools) were selling books for or on behalf of "Arliss".

Whether "Arliss"' Transactions With Schools Are Sales At Retail

The Department attempts to deflect its concession that "Arliss"' exemption certificates were facially valid by arguing that "… the certificates themselves are rendered a nullity and have no legal effect because they document exemptions to sales that never took place." Department's Brief, p. 7. They document exemptions to sales that

never took place, the Department argues, because "[o]wnership in and title to the books prior to their sale to book carnival patrons resides in "Arliss" …." *Id*., p. 8. The Department states that "its arguments make clear …" that "Arliss" retained title to the books until they were sold at school book carnivals (*id*.), because:

> Under both the Retailer's [*sic*] Occupation Tax Act and the Use Tax Act a "sale at retail" is defined as the transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for resale … ." [ellipsis original] The record indicates that the Taxpayer has provided no documentation to substantiate its claim that it transferred the ownership of or title to tangible personal property to any of its sponsoring organizations. Therefore, no such transfer of ownership or title actually took place and that ownership of and title to the books remained vested in the Taxpayer. If no transfer of ownership in or title to the books occurred, then the Taxpayer made no sales to the sponsoring organizations and the resale and exemption certificates provided by those organizations are proof of sales which never took place and, therefore, have no evidentiary value. This is the reason that the stipulation contains a statement that the Department considers the resale certificates to be irrelevant. A resale certificate has no relevance or evidentiary value if there was no sale at retail in the first place.

Department's Brief, pp. 5-6.

Despite the Department's argument, however, Illinois courts view a document in which an individual, on behalf of a corporation or other party, signs his name on a writing containing the party's certification that it is purchasing goods from another for an exempt use, together with the party's Illinois exemption identification number, as "prima facie evidence" that a nontaxable sale, in fact, took place. Hess, Inc., 278 Ill. App. 3d at 486-87, 663 N.E.2d at 125-26; American Welding Supply Co., 106 Ill. App. 3d 93, 435 N.E.2d 761; Rock Island Tobacco, 87 Ill. App. 3d 479, 409 N.E.2d 139. Considering that

the Hess, American Welding Supply and Rock Island decisions reflect twenty years of consistent Illinois precedent regarding the presumptive effect of a facially valid exemption certificate, so do I.

Moreover, the Department's fundamental argument, that "Arliss" failed to offer any documentary evidence at hearing to show that it transferred ownership of or title to the books it delivered to Illinois schools, is specious. The Department entered into evidence a stipulation of a particular and crucial fact, and the effect of that stipulation is that "Arliss" was able to forego the necessity of offering into evidence the books and records the ROTA requires it to obtain, keep and produce for inspection or audit to show that certain of the gross receipts it earned from "… *selling … tangible personal property at retail in this State …*" were not subject to tax. 35 **ILCS** 120/7 (emphasis added); *see also*, 86 Ill Admin. Code § 130.2005(r). A party is simply not obliged to introduce at hearing evidence of facts that are not in dispute.

The undisputed fact is that the Department determined, following audit, that "Arliss" had obtained and retained, for all of the transactions at issue, the type of documentation described by statute and regulations as being sufficient to support a taxpayer's claims that the gross receipts it earned from the transactions described on such documents were not taxable. *See* Stip. ¶ 1; 35 **ILCS** 120/7; 86 Ill. Admin. Code §§ 130.1405(b); 130.2005(r). The natural and logical inferences reasonably drawn from the Department's stipulation that "Arliss" obtained and retained such documents is that each and every Illinois school to whom "Arliss" delivered books during the audit period manifested, in writing, its intent to purchase books from "Arliss". Similarly, the fact that the Department never challenges that "Arliss" included a uniform exemption certificate

in the pre-delivery package sent to each school (Tr. p. 102 ("Greenspan")) reflects that, for each of the transactions at issue, "Arliss" manifested its intent to sell books to such purchasers. In light of those facts and inferences, I cannot conclude that "Arliss" complied with its statutory and regulatory obligations to produce such documentation, yet still failed, somehow, to prove that the transactions described in the exemption certificates were sales at retail.

With this record, however, the Director does not have to rely upon reasonable inferences drawn from undisputed facts. The Department's argument is also proved wrong by the documentary evidence that was admitted at hearing, and by the effect of express provisions of the ROTA and the Illinois Commercial Code ("ICC" or "the Code"). First, "Arliss" introduced into evidence at hearing, without objection, an example of the exemption certificate the Department concedes "Arliss" obtained from each of its Illinois school customers. Taxpayer Ex. 1; Tr. pp. 102-104 ("Greenspan"). That certificate: identifies "Arliss" as the "Seller"; specifically describes the "products to be purchased from the seller [as] Books & Related Materials"; states that the schools are purchasing such property "for School Fund-Raising"; states that the school is "… registered with the above listed state … within which "Arliss" Book Fairs would deliver product to us and that any such product is for wholesale or resale"; and states that "… if any such property so purchased tax free is used or consumed by the school as to make it subject to a Sales or Use Tax, we [i.e., the school] will pay the tax due directly to the proper taxing authority …." Taxpayer Ex. 1. Taxpayer Exhibit number 1, therefore, constitutes documentary evidence, closely identified with "Arliss"' books and records, which corroborates "Arliss"' claim and "Greenspan"'s direct testimony that "Arliss"'

transfers of tangible personal property to Illinois schools were, in fact, sales.[2] Tr. pp. 102-04 ("Greenspan"). The presence of Taxpayer Exhibit 1 in this record dashes the Department's factual argument that "Arliss" failed to introduce documentary evidence to support its argument that its transfers of books to Illinois schools were sales of tangible personal property. Taxpayer Ex. 1.

Second, the ICC expressly provides that, "unless otherwise agreed title [to goods] passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods …." 810 **ILCS** 5/2-401(2). At least one Illinois court has applied that specific Code provision to an Illinois tax case, and held that, for purposes of the ROTA, a reseller obtained title to goods acquired for purposes of resale when it took physical possession of the goods. Sprague v. Johnson, 195 Ill. App. 3d at 803, 552 N.E.2d at 439. "Arliss"' vice-president and Dr. "Plain" both testified to facts which clearly suggest that title to the books passed upon "Arliss"' delivery of them, and neither of those witnesses indicated any explicit agreement that "Arliss" would retain title to the books until such time as they were sold at a book carnival. *See* Tr. pp. 74 ("Plain"), 89, 96-98 ("Greenspan"). That testimony is corroborated by the plain text of the sample of the exemption certificate the Department concedes "Arliss" took from each school during the period at issue, which contains no explicit agreement regarding passage of title. *See* Taxpayer Ex. 1; Stip. ¶ 1. As was the case in Sprague, the facts adduced at this hearing do not support a conclusion that the parties had otherwise explicitly agreed

[2] Given the text of Taxpayer Exhibit 1, the Department's claimed suspicion "that most if not all of the sponsoring organizations would be horrified to learn that "Arliss" considers them to be purchasers for resale of its books" (Department's Brief, pp. 3-4 n.3), is simply incomprehensible. Why should a school be "horrified" to learn that "Arliss" considered it a purchaser for resale, when each and every school that signed a certificate, in effect, swore that it *was* such a purchaser? Taxpayer Ex. 1; Stip. ¶ 1.

that "Arliss" would retain title to the goods it delivered to schools for resale to others. Sprague, 195 Ill. App. 3d at 802-03, 552 N.E.2d at 439. Thus, the statutory presumption is that title to the books passed upon "Arliss"' physical delivery of them to each school (810 **ILCS** 5/2-401(2)), and the Department offered no evidence to rebut that presumption.

Finally, and contrary to the Department's argument that "Arliss"' transfers of books to schools for resale cannot be considered sales at retail absent documentary proof of "Arliss"' transfer of title (Department's Brief, pp. 5-6, 8), § 1 of the ROTA expressly provides that, "[t]ransactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price *shall be deemed to be sales*." 35 **ILCS** 120/1 (emphasis added). In other words, even if the Department were correct, and "Arliss" really did retain title to the books to secure the schools' payment for them, the ROTA still presumes that those transfers are sales. *Id*. Thus, there is simply no legal or factual basis to support the Department's mere argument that "Arliss" retained title to the books it delivered to schools for resale, and that its transactions with schools were, therefore, not sales at retail. *See* Department's Brief, pp. 5-6, 8.

Whether The Schools Were Agents of "Arliss" Who Disclosed At School-Run Book Carnivals That They Were Selling Books For Or On Behalf Of "Arliss".

When making a determination of agency where the putative principal denies the relationship, Illinois law is clear that the burden of proof is on the party seeking to bind or charge the principal for the acts of the alleged agent. Schmidt v. Shaver, 196 Ill. 108, 115-16, 63 N.E.2d 655, 657 (1902); Anderson v. Boy Scouts of America, Inc., 226 Ill. App.3d 440, 444, 589 N.E.2d 892, 894 (1st Dist. 1992). In this case, therefore, and since taxpayer rebutted the Department's prima facie case (*see* Goldfarb, 411 Ill. at 580, 104

N.E.2d at 609), the Department has the burden to show by a preponderance of the evidence that an agency relationship existed between "Arliss" and the schools. Schmidt v. Shaver, 196 Ill. at 118, 63 N.E.2d at 658.

The existence of an agency relationship is a question of fact. Allstate Ins. Co. v. National Tea Co., 25 Ill. App.3d 449, 323 N.E.2d 521, 530 (1st Dist. 1975). A principal/agent relationship exists "if the principal has the right or duty to supervise and control and to terminate the relationship at any time, even though he does not exercise that right." Reith v. General Telephone Co. of Illinois, 22 Ill. App. 3d 337, 317 N.E.2d 369, 372 (5th Dist. 1974). The essential test for an agency relationship is the principal's right to control the actions of the agent. Osborne v. City of Harvey, 16 Ill. App. 3d 740, 306 N.E.2d 601, 603 (1st Dist. 1973). In these and other important points, Illinois law is in virtual lockstep with the common law of agency.

Section 1 of the Restatement of the Law of Agency 2d provides:

> (1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.
> (2) The one for whom action is to be taken is the principal.
> (3) The one who is to act is the agent.

Restatement (Second) of Agency § 1 (1958). To conclude that an agency relationship exists, there must be some evidence to show that the putative principal agreed to have another act on its behalf and under its control, as well as some evidence to show that the putative agent has agreed to act for another under such conditions. *See* Restatement (Second) of Agency § 1, comments a-b;[3] *see also, e.g.*, Browder v. Hanley Dawson

[3] The comments to § 1 provide, in pertinent part:

Cadillac Co., 62 Ill. App. 3d 623, 630, 379 N.E.2d 1206, 1211 (1st Dist. 1978) ("Should the facts prove [defendants] to be agents of the [plaintiffs], they would be governed by the principles of agency law [citations omitted] in which the relationship between the principal and agent is fiduciary in character.").

Where an agreement claimed to be one for agency also involves the sale of goods, as is the case here, the evidence to consider includes the words the parties used when making confirmatory written expressions of the agreement (*see* 810 **ILCS** 5/2-202), and

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> a. *The relation of agency is created as the result of conduct by two parties manifesting that one of them is willing for the other to act for him subject to his control, and that the other consents to so act. The principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on the principal's behalf and subject to his control.* ***
>
> b. Agency as legal concept. Agency is a legal concept which depends upon the existence of required factual elements: *the manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking.* The relation which the law calls agency does not depend upon the intent of the parties to create it, nor their belief that they have done so. *To constitute the relation, there must be an agreement, but not necessarily a contract, between the parties; if the agreement results in the factual relation between them to which are attached the legal consequences of agency, an agency exists although the parties did not call it agency and did not intend the legal consequences of the relation to follow.* ***
>
> When it is doubtful whether a representative is the agent of one or the other of two contracting parties, the function of the court is to ascertain the factual relation of the parties to each other and in so doing can properly disregard a statement in the agreement that the agent is to be the agent of one rather than of the other, or a statement by the parties as to the legal relations which are thereby created. … *The agency relation results if, but only if, there is an understanding between the parties which, as interpreted by the court, creates a fiduciary relation in which the fiduciary is subject to the directions of the one on whose account he acts. It is the element of the continuous subjugation to the will of the principal which distinguishes the agent from other fiduciaries.* ***

Restatement (Second) of Agency § 1, comments a-b (emphasis added).

the parties' actions when carrying out the agreement. Department of Revenue v. Jennison-Wright Corp., 393 Ill. 401, 408, 66 N.E.2d 395, 399 (1946) ("The construction of a contract is to ascertain the intention of the parties, and there is no more convincing evidence of what the parties intended than to see what they did in carrying out its provisions."); 2A C.J.S. Agency §§ 10 ("Except where the relation arises by operation of law, agency is a voluntary, consensual relation, and to constitute the relation there must be an agreement between the parties."), 39 ("An agency agreement must possess the elements of every contract, and in determining whether a valid contract of agency has been entered into, the rules which pertain to contracts generally are applicable."). Here, the parties expressed, at least partially, the fundamental nature of their agreement in the exemption certificates prepared by "Arliss" and signed by the schools. Taxpayer Ex. 1; *see also* 810 **ILCS** 5/2-201(1). Those writings include "Arliss"' statement that it is "[s]ell[ing]", and the school is "purchas[ing] … [b]ooks and [r]elated [m]aterials" from "Arliss". Taxpayer Ex. 1. At hearing, moreover, witnesses testified on behalf of both the putative principal and the putative agent, and those witnesses all described the agreement between "Arliss" and the schools as being an agreement to sell or purchase goods. *E.g.*, Tr. pp. 15, 22-23 ("Doe"), 62-63 ("Plain"), 102-04 ("Greenspan").

In contrast to the consistent and competent documentary and testimonial evidence showing that "Arliss" sold books to schools, the Department asserts that it "…has merely said that, in selling "Arliss"' books, the members act as agents of "Arliss" because the sponsoring organizations do not own the books and are, by implication, accorded the right, on "Arliss" behalf, to transfer title to and ownership in the books to purchasers for their own use." Department's Brief, p. 8. Yet the Department fails to cite a single Illinois

decision to support its argument that an agency relationship should be implied by the facts of this case, and neither Illinois law on agency nor the common law of agency supports such a conclusion. *See, e.g.*, Goodknight v. Piriano, 197 Ill. App. 3d 319, 326, 554 N.E.2d 1, 6 (4th Dist. 1990) ("… just because [a party] alleges an agency relationship does not mean it is a well-pleaded fact to be taken as true ….").

An agency relationship may be implied where the evidence shows that a principal has held out that another person is acting as its agent (*see* 2A C.J.S. Agency § 54), or where the principal either knowingly accepts the benefits of the agent's actions so as to allow a third party to believe the agent's representations were true, or where the principal otherwise ratifies the agent's actions. *See, e.g.*, City of Evanston v. Piotrowicz, 20 Ill. 2d 512, 528, 170 N.E.2d 569, 573 (1960) ("Agency may be established … if the evidence shows one acting for another under circumstances implying knowledge on the part of the supposed principal of such acts …."); Schmidt v. Schaver, 196 Ill. at 117, 63 N.E.2d at 658 (discussing facts usually associated with claims of implied agency). The evidence adduced at hearing, however, does not support a conclusion that "Arliss" ever held out any of the Illinois schools as an agent that was selling books on "Arliss"' behalf, let alone all of them. Nor does the evidence establish that the schools holding book carnivals were selling books for "Arliss", or on its behalf, at those book carnivals.

In its brief, "Arliss" cites § 14J of the Restatement (Second) of Agency, which provides, in part:

> 14J. AGENT OR BUYER
> *One who receives goods from another for resale to a third person is not thereby the other's agent in the transaction*: whether he is an agent for this purpose or is himself a buyer depends upon whether the parties agree that his duty is to

> act primarily for the benefit of the one delivering the goods to him or is to act primarily for his own benefit.

Restatement (Second) of Agency § 14J (emphasis added). "Arliss" argues that its transactions with Illinois schools should not be viewed as evidence of an agency relationship because a school's fundraising sales at books carnivals were not primarily for "Arliss"' benefit, but rather, and consistent with § 14J, they were primarily for the school's benefit. "Arliss" Brief, p. 7. The Department ignored "Arliss"' argument, as well as § 14J.

I agree with "Arliss" that § 14J is pertinent to this dispute. Particularly helpful are the comments to § 14J, which provide, *inter alia*, a list of factors to consider when deciding whether a claimed buy-sell agreement is, in actuality, an agency agreement.[4] At

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[4] Comment b to § 14J provides:

> b. Indications of a sale. In the ordinary case the distinction between a buyer and an agent is clear, but for any of a number of reasons it may be desirable to create a relation which has some of the elements of a sale and also some of the elements of an agency. The typical difficult case is that of a "sale on consignment", which may be an immediate sale, or a sale to the consignee when the goods are sold by him to a third person, or an agency. *The following factors indicate a sale* although no one factor is determinative:
>
> (1) That the consignee gets legal title and possession of the goods. ***
>
> (2) That the consignee becomes responsible for an agreed price, either at once or when the goods are sold. ***
>
> (3) That the consignee can fix the price at which he sells without accounting to the transferor for the difference between what he obtains and the price he pays. ***
>
> (4) That the goods are incomplete or unfinished and it is understood that the transferee is to make additions to them or to complete the process of manufacture.
>
> (5) That the risk of loss by accident is upon the transferee.
>
> (6) That the transferee deals, or has a right to deal, with the goods of persons other than the transferor.
>
> (7) That the transferee deals in his own name and does not disclose that the goods are those of another.
>
> * * *

Restatement (Second) of Agency § 14J, comments b (emphasis added).

hearing, "Arliss" offered evidence of five of the seven factors that indicate a sale. *See* Restatement (Second) of Agency § 14J, comment b(1)-(3), (5), (7). The evidence supports "Arliss"' argument that the fundamental agreement between "Arliss" and the schools was not one for agency, but one for the sale or return of goods. 810 **ILCS** 5/2-326, 5/327(2).[5]

Dr. "Plain" and "Arliss"' chairman testified that if books were stolen or damaged following delivery to a school, the school would have to pay for those books. Tr. pp. 47 ("Doe"), 72 ("Plain"). That testimony is perfectly consistent with the documentary and other evidence offered at hearing, and with the legal presumption that title to the books passed to the schools following "Arliss"' delivery of them. Taxpayer Ex. 1; Department Ex. 3; 810 **ILCS** 5/2-401(2); *see also*, Restatement (Second) of Agency § 14J, comment b(1), (5). Taken together with the documents and other evidence showing how "Arliss" and the schools agreed to calculate the schools' cost price of the books "Arliss" delivered for fundraising resale, such evidence also showed that, following delivery, the school became obligated to pay an agreed price for all books not returned to "Arliss", even though the price itself was to be determined after a book fair was held. Department Ex. 3;

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[5] A "sale or return" is defined by § 2-326(1) of the ICC, which provides, in part:

> Unless otherwise agreed, if delivered goods may be returned to the buyer even though they conform to the contract, the transaction is … a "sale or return" if the goods are primarily for resale.

810 **ILCS** 5/2-326(1)(b).

Comment 2 to § 2-327 of the Code further provides, in part:

> In the case of a sale or return, *the return of any unsold unit merely because it is unsold is the normal intent of the "sale or return" provision*, and therefore the right to return for this reason alone is independent of any other action under the contract which would turn on wholly different considerations.

810 **ILCS** 5/2-327, Uniform Commercial Code comment 2 (West 1993) (emphasis added).

Tr. pp. 34-36, 50-51 (“Doe”), 78 (“Plain”); Restatement (Second) of Agency § 14J, comment b(2).

The Department appears to suggest that “Arliss” controlled the prices the schools charged for books at book carnivals, since “Arliss” included suggested selling prices “… for each book ….” Department’s Brief, p. 2. But the evidence offered at hearing was that “Arliss” included suggested selling prices on “some” or “many” of the books sold to schools, not on each and every book. Tr. pp. 20, 28 (“Doe”), 70-71 (“Plain”). Additionally, both “Doe” and “Plain” testified that a school was free to charge whatever it wished for the books at book carnivals. Tr. pp. 20, 48-39 (“Doe”), 70-71 (“Plain”). That testimony seems consistent with common sense. Many publishers print a suggested retail price on the dust jackets of books distributed to persons for resale, but that doesn’t keep resellers from choosing their own prices when selling books to customers. The market is what primarily determines a seller’s pricing decision, not the manufacturer’s suggested retail price. And regardless whether any school actually discounted or raised the suggested prices “Arliss” included on books, there was never any serious claim by the Department that the schools were prohibited from changing such prices. Thus, I accept as credible the witnesses’ competent testimony that schools were free to set the prices at which they sold books at book carnivals, without obtaining permission from “Arliss”. Tr. pp. 20, 48-49 (“Doe”), 70-71 (“Plain”); *see also,* Restatement (Second) of Agency § 14J, comment b(3).

Dr. “Plain” testified that when the persons who purchased books at her school’s book carnivals wrote checks for their purchases, they wrote them payable to “#1” school and not to “Arliss”. Tr. pp. 74 (“Plain”). “Plain”, thereafter, drew a check from the

school's account, made payable to "Arliss", for the books the school either sold or decided to keep. Tr. pp. 74-75 ("Plain"). "Greenspan" confirmed that "Arliss"' school customers paid for the books using checks drawn on the school's own account. Tr. pp. 101-02 ("Greenspan"). In that regard, the evidence tends to show that the schools were selling books in their own names, and therefore, on their own behalf, and not on "Arliss"' behalf. *See* Restatement (Second) of Agency § 14J, comment b(7).

Both Dr. "Plain" and "Doe" also testified that the decision whether to sell or keep the books "Arliss" delivered was made by the school, and not by "Arliss". Tr. pp. 43 ("Doe"), 65 ("Plain"). "Greenspan" testified further that "Arliss" hoped that the schools would use some of the money they earned from reselling books to pay for some of the books "Arliss" delivered but which the school had not sold. Tr. pp. 99-100 ("Greenspan"). Again, that testimony is credible, and closely identified with the books and records admitted at hearing. *See* Department Ex. 3. The amount of money a school owed for the books "Arliss" delivered would depend, where applicable, on how many books the school decided to keep. *Id.*; Tr. pp. 34-36 ("Doe"). Dr. "Plain" also testified that her school often purchased additional books from "Arliss" following a book carnival. Tr. p. 73 ("Plain"). Yet nowhere in the Department's brief does it attempt to explain how a school might be acting as "Arliss"' agent — instead of as a purchaser for use — with regard to the books any of the schools decided to keep.

Nor did the Department introduce competent evidence to show how "Arliss" controlled any aspect of the schools' later sales of books at school book carnivals. The only aspects of the transactions that "Arliss" appeared to have control over were its delivery of whatever books the schools ordered (through its Illinois–based

contractor/distributor), and, presumably, its collection of the price the schools agreed to pay for those goods. *See* Department Ex. 3; Tr. pp. 81-91 (Sagan). Such control, however, is exactly the kind of control any seller exercises over its sales. That "Arliss"' customers actually paid for the books *after* they held book carnivals, moreover, is not evidence that tends to show that the schools agreed to act as, or in fact were, "Arliss"' agents. Restatements (Second) of Agency § 14J, comment b(2); *accord*, Schmidt v. Schaver, 196 Ill. at 117, 63 N.E.2d at 658 (one may not infer an agency relationship from the mere entrustment of personal property to another for purposes of resale). A seller's express or implied agreement to wait for payment for goods delivered to the buyer should not be viewed as evidence of an agency relationship, unless one is also willing to believe that a deadbeat buyer in possession is acting, as a fiduciary is required to act, in his principle's pecuniary best interests. *See* Restatements (Second) of Agency § 14J, comment a.

Further, to prevail the Department was obliged to offer evidence to support its claim that "Arliss" was a *disclosed* principal. *See* Department's Brief, p. 8. According to the Department's own regulation, "… a principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent." 86 Ill. Admin. Code § 130.1915(b); McLean v. Department of Revenue, 184 Ill. 2d 341, 360-61, 704 N.E.2d 352, 362 (1998) (upholding the validity of Department regulation 130.1915). Yet there was absolutely no evidence offered to show that any individual school, at any particular book carnival — let alone every school, at every book fair — disclosed

"Arliss"' name and address to the people attending a fair, so as to notify them that the school was acting as an agent to sell books for "Arliss", or on "Arliss"' behalf.

This particular aspect of the Department's agency theory is not only devoid of any direct evidence, it is also the most counter-intuitive. How many parents would be inclined to attend events described as fundraising school book carnivals, and then purchase books, if they were made aware that the school was, in effect, raising funds for "Arliss", and not for the school? Perhaps some, but not as many as if the people attending such events believed that the school was selling books on its own behalf, even if the school acquired such books from another just for the event. The writings the parties used to partially document their agreement support a conclusion that that is exactly what the schools were doing when they made sales of books at book fairs. Taxpayer Ex. 1; Department Ex. 3.

The Department, however, argues that since "Arliss"' promotional materials referred to a book carnival as an "Arliss" Book Carnival," and since "Arliss"' name was prominently displayed on such materials, that evidence clearly shows that "Arliss" was the entity that was selling books. Department's Brief, pp. 2, 8. On that point, of course, there is no dispute that "Arliss" was selling books. The question is, to whom? The evidence introduced at hearing showed that "Arliss" tendered its promotional literature *to the schools*, not to the people who attended the schools' book carnivals. Tr. pp. 17-18 ("Doe"). And while no one disputes that "Arliss" knew that the schools would resell many of the books "Arliss" delivered for sale or return — indeed, the anticipated resale of goods is a fundamental element of an agreement for the sale or return of goods, *see* 810 **ILCS** 5/2-326(1)(b) — the evidence shows that *the schools* were "Arliss"'

customers, not the persons to whom the schools intended to resell those books. Taxpayer Ex. 1; Department Ex. 3; Tr. pp. 41-42 ("Doe"), 96 ("Greenspan"). At best, the evidence the Department relies upon to establish that "Arliss" was a disclosed principal is at least as supportive of "Arliss"' characterization of its agreements with the schools as it is of the Department's characterization of the parties' agreements. All of the other evidence admitted at hearing clearly tips the scale in "Arliss"' favor.

After considering the competent evidence in light of the factors identified in § 14J comment b of the Restatement of Agency, as well as in light of the critical factor required by Illinois case law (that being the principal's ability to control the agent's actions taken on behalf of the principal), I conclude that the Department has not shown, by a preponderance of competent evidence, that the schools were "Arliss"' agents. Nor has the Department established that any school ever disclosed to anyone that it was selling books for "Arliss", or that it was selling books on "Arliss" behalf, at book carnivals or otherwise. *See* 86 Ill. Admin Code § 130.1915.

Conclusion:

The record shows that "Arliss" was a supplier that sold books to schools for use or for resale in Illinois. Taxpayer Ex. 1; Stip. ¶ 1; Department Ex. 3. Because the evidence and stipulations of record show that "Arliss" obtained and retained facially valid exemption certificates for all of the transactions at issue, "Arliss" rebutted the Department's determination that the gross receipts "Arliss" realized from its sales to Illinois schools were subject to ROT. Taxpayer Ex. 1; Stip. ¶ 1; American Welding Supply Co., 106 Ill. App. 3d at 102, 453 N.E.2d at 768.

Thereafter, the Department never offered any competent evidence to support its argument that the transactions between "Arliss" and the schools were not sales at retail. *See* 35 **ILCS** 120/1; 810 **ILCS** 5/2-401(2). Nor did the Department show, by the preponderance of competent evidence, that the schools acted as "Arliss"' agents to sell books for "Arliss", or on its behalf. More specifically, the Department did not show that, through the actions of Illinois schools who acted under "Arliss"' control, "Arliss" sold books to others in Illinois at occasionally held school book carnivals, at which "Arliss"' name and address were disclosed so as to notify potential book purchasers that the schools were selling books for "Arliss", or that they were selling books on "Arliss"' behalf. 86 Ill. Admin. Code § 130.1915(b). I recommend, therefore, that the Director revise the NTLs issued to show no liability, and that he finalize them as so revised.

9/5/00
Date

Administrative Law Judge